

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Further Notice of Proposed Rulemaking, GN Docket No. 12-354

Today, we take another step towards allocating the 3.5 GHz Band for additional wireless uses. Currently, this valuable spectrum is used for federal and non-federal services, such as radar systems and satellite earth stations. In the future, it could be opened up for use by small cell systems, wireless backhaul, or the next innovative wireless technology. But, we are faced with balancing the introduction of new wireless services with the challenging task of protecting incumbents from harmful interference.

That is why I strongly prefer clearing federal government users and reallocating over sharing. In this unique case, however, it may be worthwhile to pursue sharing to move forward quickly instead of waiting for a better solution or for clearing to be completed. To this end, the 3.5 GHz Band will be one big experiment in terms of the proposed sharing design and licensing scheme. We place a lot of trust that this novel effort will be successful. But, if it does not meet expectations, we are not precluded from altering it in the future. Accordingly, I will vote in favor today's further notice that seeks to ask questions, acquire additional information, and obtain necessary data on how this experiment should best proceed. While I will keep an open mind as the record develops, I have several concerns that I would like to see addressed before any final rulemaking.

First, I worry that the proposed exclusion zones are too large to attract adequate interest and investment in this band. Despite evidence in the record showing that low-power small cell systems will not require such large exclusion zones, there has been no progress in reducing their size, even for this limited purpose. Today's further notice walls off the same 60 percent of the United States population as introduced by NTIA in 2010 and put forth in the Commission's original notice in December 2012.¹ The 3.5 GHz Band would be largely unusable on the east and west coasts and along the Gulf. As you can see from the slide, New England, Florida, South Carolina, Louisiana; almost all of New York, Virginia, California; and half of Texas are in exclusion zones.² I hope and trust that they can be substantially reduced and that there will be opportunities for the new wireless operators and federal incumbents to coordinate in these areas.

Second, I am concerned that the proposed term and geographic size of the Priority Access Licenses, or "PALs," may also hinder investment and innovation. For example, the PALs may be licensed for one year terms that may be aggregated up to five years. There is no certainty that, after making the capital expenditure during that time, a licensee would be able to continue its priority access. Additionally, the item proposes to license PALs by census tracts, which means there would be approximately 74,000 licenses.³ As a result, applicants could face the difficulty of bidding on thousands of licenses in order to cover any one metropolitan area.

¹ U.S. Department of Commerce, National Telecommunications and Information Administration, *An Assessment of the Near-Term Viability of Accommodating Wireless Broadband Systems in the 1675-1710 MHz, 1755-1780 MHz, 3500-3650 MHz, 4200-4220 MHz, and 4380-4400 MHz Bands* (rel. Oct. 2010) (*NTIA Fast Track Report*), available at http://www.ntia.doc.gov/files/ntia/publications/fasttrackevaluation_11152010.pdf; *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Notice of Proposed Rulemaking and Order, 27 FCC Rcd 15594 (2012).

² *NTIA Fast Track Report* at 5-7, Fig. 5-3.

³ U.S. Department of Commerce, Census Bureau, *2010 Census Tallies of Census Tracts, Block Groups & Blocks*, <https://www.census.gov/geo/maps-data/data/tallies/tractblock.html> (last visited Apr. 22, 2014).

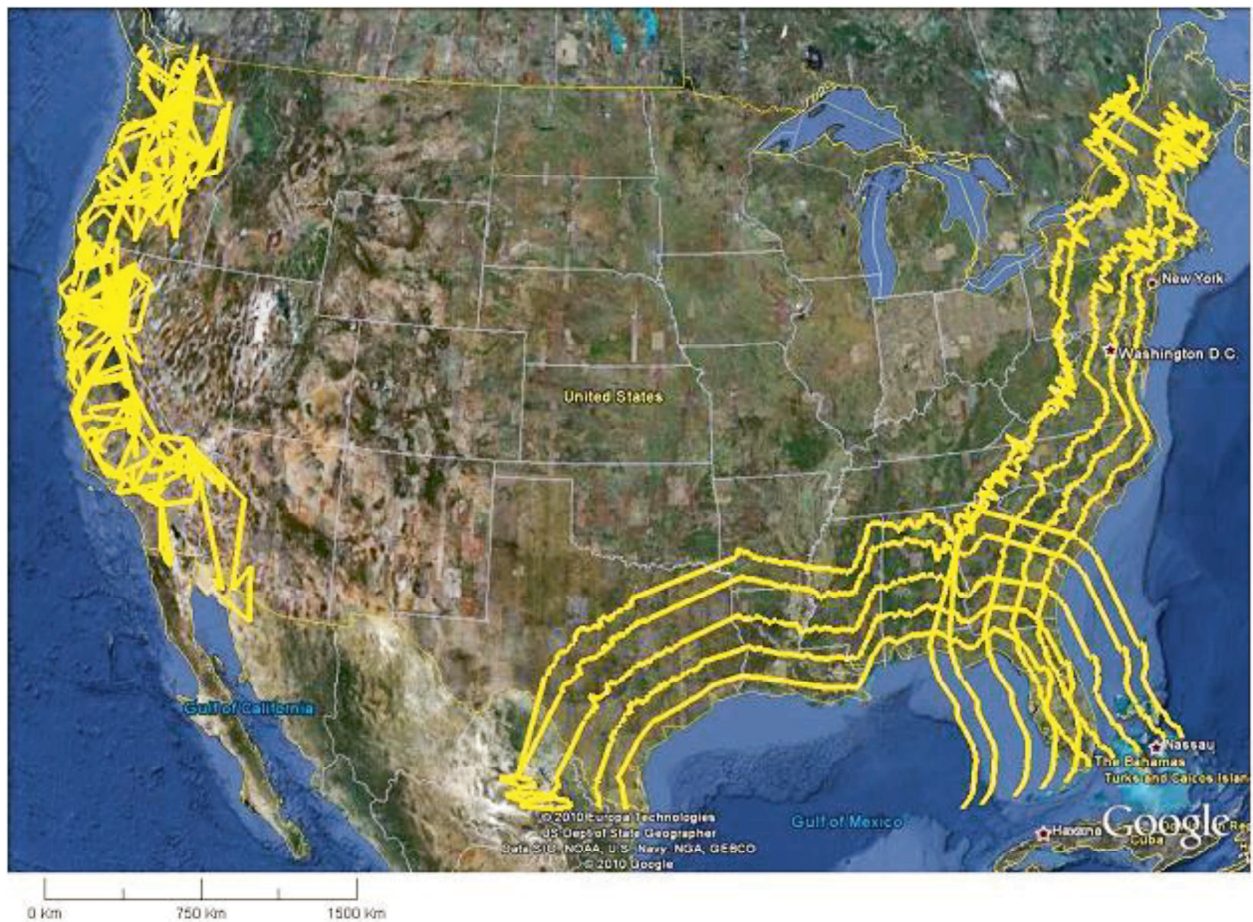
Third, this further notice supports a three-tiered use system that includes incumbents, PALs, and General Authorized Access (GAA) users. If this is not complicated enough, the Commission proposes to reserve up to 20 megahertz of spectrum for critical users within indoor facilities and may expand this preferential treatment to certain outdoor facilities. This could reduce available spectrum for GAA users. And, although we have not fully defined this class of users at this stage, it does not appear that many hospitals, public safety entities or local governments are actively seeking this spectrum. Why not eliminate Contained Access User set-asides and allow GAA or PAL providers to offer services to these users? Similarly, if critical users have a need, why can't they apply for GAA spectrum or PALs?

Further, this item proposes spectrum aggregation limits for PALs in the 3.5 GHz Band which I believe to be completely unnecessary. Given the propagation characteristics of this spectrum and its ease of reuse, there will be plenty of opportunity for operators to deploy any number of devices and services in this spectrum.

Finally, the 3.5 GHz Band is ideal for placement of small cells which are helping carriers manage network congestion as data use increases exponentially every year. We need to do all we can to enable more efficient small cell deployment to bring better wireless broadband service to Americans. Therefore, I hope that the Commission will expeditiously conclude this proceeding to make the additional spectrum available for this purpose. At the same time, we should work to finalize the proceeding to implement section 6409 of the Middle Class Tax Relief and Job Creation Act, or separate off for its own proceeding consideration of just small cells, whichever can be done faster. If we want the 3.5 GHz experiment to work, we need to move on small cell siting.

I thank the dedicated staff from the Wireless Telecommunications Bureau, the Office of Engineering and Technology and the International Bureau for all of their efforts so far, including sensitive and complicated negotiations with NTIA and other federal agencies, and for all the work that lies ahead to get this rulemaking across the finish line.

Composite Depiction of Exclusion Zone Distances, Shipborne Radar Systems



Source: NTIA Fast Track Report at 5-7, Fig. 5-3.